party pays a debt for which another is primarily answerable, and which that other ought, in equity and good conscience, to have discharged.[7] Upon payment of the debt the surety becomes subrogated to the right of the creditor, and, in the principal case, would be entitled to a conveyance of the land. Under the doctrine of the principal case the creditor loses the benefit of his contract, and, furthermore, it does not follow that he is placed *in statu quo* upon receiving a return of the consideration; especially is this so in the case of land which may have deteriorated in value, and it is submitted that the loss should fall upon him who undertook to insure the debt.

D. A. M.

TORTS: INTERFERENCE WITH CONTRACTUAL RELATIONS.—The plaintiff, a broker employed to sell vineyards, found a party ready, willing and able to buy, and was about to conclude negotiations for the sale by an agreement of purchase, when the defendants, combined together for the purpose of injuring the plaintiff and destroying his business, intimidated and coerced his employer to sell directly to the prospective purchaser without the agency of the plaintiff and to his actual damage. Had it not been for the defendants' interference, the plaintiff would have consummated the sale. The District Court of Appeal for the Third Appellate District in the case of *Krigbaum v. Sbarbaro*[1] held that these facts constituted a cause of action.

Though not a single case is cited in the opinion, it is difficult to see how the court could have decided otherwise than it did, for the propositions laid down are so fully supported by sound principle and authority as to be almost elementary. Whether viewed as an interference with business and the right of making contracts, or as the inducing of breach of contractual relations, the defendants' acts were unlawful and actionable. The decision however, resting as it does on the theory of tort arising from procuring breach of contract, suggests some pertinent queries concerning the California doctrine on the subject. It does not appear from the report whether the court's attention was drawn to the case of Boyson v. Thorn,[2] where it was held by the Supreme Court that no action lay against one who, from malicious motives, but without threats, violence, fraud, falsehood, deception, or benefit to himself, induced another to violate his contract with the plaintiff, no personal relation being involved. While it is to be observed that the holding in the principal case, where the court saw threats, intimidation and coercion, nowise conflicts with that in the earlier, which expressly excepts such unlawful means from the scope of

---

[7] Harper v. McVeigh, (1887) 82 Va. 751, 1 S. E. 193.

[1] (Dec 4, 1913) 17 Cal. App. Dec. 714, 138 Pac. 364.

[2] (1893) 98 Cal. 578, 33 Pac. 492, 21 L. R. A. 233.

its ruling, and, indeed, indicates that the use of those means by the interfering party would render him liable to the injured contractee, it would be interesting to know just how far today the actual decision in Boyson v. Thorn would be considered as binding authority in this jurisdiction.

That case has been time and again cited as authority for the truism that an act which does not amount to a legal injury cannot be actionable because done with a bad intent. But in applying the principle the court there reasoned that because one may lawfully persuade another to break his contract with a third person, if it be done from good motives, therefore one may do the same act with malicious motives. This conclusion would be unquestionable could it once be admitted that every person has a legal right or privilege to interfere as he pleases, and for whatever purpose he will, in the contractual relations of every other person, even to that other's damage, so long as he does not use unlawful means to accomplish his end; for if he has no such right or privilege, clearly his act is unlawful. And the existence of such right or privilege might be allowed if we take the proposition that a lawful act cannot be converted into an unlawful one by motive to mean that, where a person, if inspired by one kind of motive, has a lawful right or privilege of doing a thing, the same act is lawful, when the result of any motive, or that an act lawful under certain circumstances is therefore lawful under all circumstances. It is submitted, however, that this sort of reasoning is neither logically nor legally accurate.[3] All that the proposition in question really means, is that where a lawful right exists to do a thing irrespective of motive, motive is immaterial. In other words, to use an expression of Chief Justice Beatty,[4] an act in its essence lawful does not become actionable because inspired by a bad motive; but the weight of reason and authority favors the view that the motive of a harmful act is material, where the act is not absolutely and unqualifiedly lawful in itself. Very analogous to the case of inducing breach of contract is that of interference with business, respecting which the true rule would appear to be that any injury to a legitimate business, whether the effect of conspiracy or not, is prima facie actionable, but may be defended on a plea of justification, to defeat which it may be shown that the defendant's acts were prompted by express malice and done for the primary purpose of injuring the plaintiff.[5] The principle seems equally applicable where a person, with knowledge of the contract, induces a party thereto to break the same: unless the former has

---

[3] See Tuttle v. Buck, (1909) 107 Minn. 145, 119 N. W. 946.

[4] Union Labor Hosp. v. Vance Lumber Co., (1910) 158 Cal. 551, 557, 558, 112 Pac. 886, 889.

[5] Parkinson Co. v. Bldg. Trades Council, (1908) 154 Cal. 581, 98 Pac. 1027, Chief Justice Beatty's opinion; Union Labor Hosp. v. Vance Lumber Co. supra, Chief Justice Beatty's opinion.

a legal justification or excuse to offer in his defense, he should be held liable for the actual injury caused to the other contracting party. Such a legal justification or excuse might exist, where the act of the defendant was done with good motives. Of course, in order to prevent the infliction of injustice, the maliciousness of the defendant's act must be clearly proved. Our conclusion is that, having regard to the prevailing general principles of tort liability and with a view of avoiding inconvenient inconsistencies, it may be doubted whether the courts of this state ought to or would follow the unfortunate decision in Boyson v. Thorn, if the question there considered were again squarely presented for discussion.

T. A. J. D.

WATER RIGHTS: ACTION BY RIPARIAN OWNER AGAINST NONRIPARIAN OWNER AT COMMON LAW.—Under the common law, water rights cannot be acquired against a riparian owner for nonriparian use through prior taking or appropriation.[1] Grant, condemnation or prescription may give nonriparian rights, but otherwise rights in the stream are confined to the riparian owners (owners of the bordering lands), among whom it is to be enjoyed equally upon their riparian lands as a matter of common right at any time.[2] Exclusion of nonriparian owners is irrespective of use or nonuse by riparian owners.[3] This is enforced east of the Mississippi Valley, and also in many States west of it, such as California, so far as grant, condemnation or prescription (or other special circumstances) have not grown up as a bar.

Whether the riparian owner need show damage is a controverted question. Any diminution of flow whatever (it is usually held) for nonriparian use, violates the riparian right, unless the diminution be so comparatively slight as to be beneath serious notice, (the rule *"de minimis non curat lex"*).[4] From the standpoint of the community of riparian owners from source to mouth, this preserves the stream for many against one, which social reason founds the riparian doctrine. As a controversy, however,

---

[1] Mason v. Hill, 5 Barn. & Adol. 1; Lux v. Haggin, 69 Cal. 255, 10 Pac. 674.

[2] Tyler v. Wilkinson, 4 Mason 397, Fed. Case No. 14312; Turner v. James Canal Co., 155 Cal., 82. 99 Pac 520.

[3] Lux v. Haggin, supra; St. Germain Co. v. Hawthorn Ditch Co., (S. Dak.), 143 N. W. 124.

[4] Webb v. Portland Cement Company, 3 Summer 189, Fed. Case 17322; Gardner v. Newburg (N. Y.), 2 Johns Ch. 164, 165; Creighton v. Evans, 53 Cal. 56; Moore v. Clear Lake Water Company, 68 Cal. 146, 8 Pac. 816; Heilbron v. Ditch Co., 75 Cal. 121, 17 Pac. 65; Gould v. Eaton, 117 Cal. 539. 543, 49 Pac. 577; Hargrave v. Cook, 108 Cal. 72, 41 Pac. 18; Anaheim Union Water Co. v. Fuller 150 Cal. 327, 88 Pac. 978; Duckworth v. Watsonville Co., 150 Cal. 520, 89 Pac. 338; Shurtleff v. Kehner, 163 Cal. 24, 124 Pac. 724; Roberts v. Martin, (W. Va.), 77 S. E. 535.